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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN LEE HUNTER, JR.,

Defendant and Appellant.

2d Crim. No. B213790  
(Super. Ct. No. 2008024298)  
(Ventura County)

John Lee Hunter, Jr. appeals a judgment following conviction of misdemeanor assault, assault with a deadly weapon, and assault by means likely to produce great bodily injury, with findings of a prior serious felony strike conviction and service of two prior prison terms. (Pen. Code, §§ 240, 245, subd. (a)(1), 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).)<sup>1</sup> We modify the judgment to stay the prison term for count 3, but otherwise affirm.

*FACTS AND PROCEDURAL HISTORY*

Shonnise Mitchell and Hunter had dated for a year. In the early evening of May 15, 2008, Mitchell went to Hunter's Port Hueneme home and awaited his arrival. She locked the bedroom door and fell asleep on the bed. Shortly thereafter, Hunter awoke her by banging on the bedroom door. She opened the door and saw that Hunter

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<sup>1</sup> All further statutory references are to the Penal Code.

had been drinking. He pushed Mitchell onto the bed and when she arose, struck her several times with his fist. He also placed a kitchen knife against her throat and threatened to kill her. Mitchell fled and sought assistance from her family, who summoned police officers. In a recorded interview with Port Hueneme Police Officer Paul Gomez, Mitchell described the assault and her injuries. Mitchell also stated that Hunter had struck her several weeks earlier, cracking her tooth. At trial, the parties stipulated that Mitchell suffered a swollen and discolored left eye, a bruised ear, bruises on her right arm and leg, and a bruised neck.

By the time of trial, Mitchell had married Hunter and was pregnant. She testified that they argued the evening of May 15, 2008, and that they had struck each other. Mitchell denied that Hunter had threatened her with a knife. She explained that she lied to Officer Gomez because she was angry.

The jury convicted Hunter of misdemeanor assault (count 1), assault with a deadly weapon (count 2), and assault by means likely to produce great bodily injury (count 3). (§§ 240, 245, subd. (a)(1).) In a separate proceeding, the trial court found that Hunter suffered a prior serious felony strike conviction and that he served two prior prison terms within the meaning of section 667.5, subdivision (b).

At sentencing, the trial court denied Hunter's request to strike the prior serious felony conviction. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504.) The court sentenced him to a 15-year term for count 2, consisting of a doubled four-year upper term (eight years), five years for the serious felony enhancement, and two years for service of prior prison terms. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667, subd. (a), 667.5, subd. (b).) It sentenced Hunter to the same sentence for count 3, but decided that section 654 applied, requiring count 3 to be served concurrently to count 2. The trial judge stated: "[T]he sentence on Count 3 is to run concurrently with the sentence on Count 2. [¶] The reason for the selection of the concurrent sentences is because I find [that] section 654 of the Penal Code requires that. These crimes were all part of the same transaction, they had the same general criminal objective." The court

also imposed a six-month term for count 1, imposed a \$5,000 restitution fine and a \$5,000 parole revocation restitution fine, and awarded Hunter 358 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45.)

Hunter appeals and contends that section 654 requires the trial court to stay punishment for count 3.

### *DISCUSSION*

During sentencing, the trial judge stated that "[t]he probation officer thought [section 654] applies and the defendant argues it applies and I think it's appropriate." The prosecutor responded that he believed "it also applies." The trial court erred, however, by imposing a concurrent sentence for count 3 because it expressly found that Hunter had but one intent and objective. (*People v. Hester* (2000) 22 Cal.4th 290, 294; *People v. Latimer* (1993) 5 Cal.4th 1203, 1211.) The trial judge stated that "[t]hese crimes were all part of the same transaction, they had the same general criminal objective." Section 654 precludes multiple punishment for an indivisible course of conduct. (*Hester*, at p. 294.)

The Attorney General argues that the trial court erred in applying section 654 because Hunter had separate intents and objectives when he committed counts 2 and 3. The Attorney General also points out that the probation officer in fact did not make any recommendation regarding section 654.

We reject these arguments. We presume that the trial court understands and applies the law correctly. (*People v. Campo* (1987) 193 Cal.App.3d 1423, 1432.) "It is presumed that official duty has been regularly performed' (Evid. Code § 664), and in the absence of contrary evidence this court must assume that the trial court properly followed established law." (*Ibid.*) Here evidence establishes that Hunter struck Mitchell before and after threatening her with a knife. The trial court reasonably could conclude that Hunter's acts were one indivisible transaction. (*People v. Dominguez* (1995) 38 Cal.App.4th 410, 420 [Whether evidence shows defendant guilty of one crime or two is partly a factual question].) Moreover, the prosecutor so conceded at sentencing.

We modify the judgment to stay the prison term for count 3, but otherwise affirm.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

James P. Cloninger, Judge  
Superior Court County of Ventura

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Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec, Supervising Deputy Attorney General, Robert M. Snider, Deputy Attorney General, for Plaintiff and Respondent.